

April 17, 2015

William H. Hyatt, Jr.  
973.848.4045  
F: 973.848.4001  
william.hyatt@klgates.com

**Via Electronic (hq.foia@epa.gov) and Hand Delivery**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
FOIA and Privacy Branch  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

Re: Lower Passaic River Study Area  
Freedom of Information Act Appeal: EPA-R2-2014-006476

Dear Sir/Madam:

Our firm represents the Cooperating Parties Group ("CPG") with respect to the Lower Passaic River Study Area ("LPRSA"). I am writing to appeal Freedom of Information Act Request ("FOIA Request") EPA-R2-2014-006476 submitted to the United States Environmental Protection Agency ("EPA") Region 2 on May 14, 2014, in relation to EPA's Proposed Plan for the lower eight miles of the LPRSA ("Proposed Plan"). A copy of the FOIA Request is enclosed.

The FOIA Request requested the following:

1. An accounting of funds spent and/or committed to be spent in developing the April 11, 2014 Proposed Plan (PP) for the Lower 8 Miles of the Lower Passaic River Study Area (LPRSA) and the reports and appendices thereto, including but not limited to the Remedial Investigation (RI) and Focused Feasibility Study (FFS).
2. Any authorization for expenditure of funds for the PP and the reports and appendices thereto.
3. All comments to the National Remedy Review Board (NRRB) from the partner agencies (NOAA, FWS, State of NJ) sent to EPA for transmittal to the NRRB and any EPA responses to such comments.
4. Any and all communications regarding the LPRSA between:  
(1) Any U.S. EPA personnel and any member of the Community Advisory Group or any other person purporting to be a representative of the community; and (2) Any member of the

# K&L GATES

Headquarters Freedom of Information Staff

April 17, 2015

Page 2

public and Judith Enck, including any alter egos or aliases of Administrator Enck. This information would include but not be limited to all letters, email (both official accounts and personal accounts used for official business), and any notes, records, reports, summaries or memoranda taken during or prepared after communications with members of the public relating to the LPRSA.

5. The following items related to the public hearing on the PP, held by EPA in Newark, NJ on May 7, 2014 (Hearing): (1) video and/or other recordings taken during the Hearing; (2) a transcript of the Hearing; (3) Sign-in sheets for participants at the Hearing; (4) Communications between Region 2 and members of the public regarding preparations for the Hearing (to the extent not covered by request (4)); and (5) Any petitions available for signature during the Hearing.
6. Any documents relating to the designation of any portion of the Diamond Alkali Superfund Site as an operable unit.
7. The sample identification numbers and chemistry for the four core samples, four grab samples and two dam catchment samples that EPA uses to define upriver (above the Dundee Dam) surface sediment background conditions.

EPA provided interim releases of information related to this FOIA Request on or around June 17, 2014. EPA sent a letter to the CPG dated March 20, 2015, which provides that all responsive information to this request has been released. Although the CPG understands that EPA has provided documents that respond to parts (3), (5), and (7) of the Request, the CPG does not believe that EPA has adequately and fully responded to parts (1), (2), (4), and (6) of the Request, and, therefore, submits this appeal with regard to these parts.

Specifically, EPA has failed to provide an accounting of funds spent or committed to be spent in developing the Proposed Plan and the reports and appendices thereto, including but not limited to the Remedial Investigation and Focused Feasibility Study. EPA has also failed to provide documents authorizing the expenditure of funds for the Proposed Plan. No documents were provided that explain EPA's decision to designate of any portion of the Diamond Alkali Superfund Site as an operable unit. The CPG first learned of EPA's designation of the lower eight miles of the LPRSA as an operable unit from EPA's Proposed Plan and has not received any meaningful explanation as to the basis for this designation.

Although EPA did produce Judith Enck's general emails to the Passaic River Community Advisory Group, EPA did not produce Administrator Enck's personal communications with members of the public. An enclosed Minority Staff Report of the Senate Environment Committee states that watchdog groups have uncovered Administrator

# K&L GATES

Headquarters Freedom of Information Staff

April 17, 2015

Page 3

Enck using her personal email to communicate with environmentalists in violation of EPA policy and that the EPA's Office of the Investigator General (OIG) has confirmed that Administrator Enck is the subject of an OIG inquiry.<sup>1</sup> In light of this information, the CPG requests that EPA either produce Administrator Enck's personal communications with members of the public, whether sent from an official account or a personal account used for official business, or confirm that no such correspondence exists.

The information requested in parts (1), (2), (4), and (6) of the Request is critical for the CPG and the public to understand the basis for the Proposed Plan and the development of EPA's Conceptual Site Model from the time of EPA's initial release of the draft FFS in 2007 through its release of the revised FFS and Proposed Plan in April 2014. It is also critical for the CPG to review and understand EPA's position with respect to these matters as the CPG works to complete the remedial investigation/feasibility study ("RI/FS") of the full 17-mile LPRSA pursuant to the May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study – CERCLA Docket No. 02-2007-2009.

Very truly yours,



William H. Hyatt, Jr.

Enclosures

cc: Sarah P. Flanagan, Esq., EPA Region 2, Assistant Regional Counsel (via electronic mail)

---

<sup>1</sup> Two media accounts related to these issues are also enclosed.